

Remarks

This Response and Request for Reconsideration is in reply to the Final Office Action dated **October 2, 2008**, wherein the Office rejected claims 38, 41, and 44 under 35 U.S.C. § 102.

In the previously filed Amendment, Applicants amended claims 38, 41, and 44 to further define over Berry by reciting that the first, second, and, if present, third loop containing band each “extending 360 degrees about the longitudinal axis.” In response to the previously filed amendment and RCE, the Office finally rejected the claims in the first office action immediately following the filing of an RCE.

The Office, however, failed to provide any reasoning or annotate any figures to show how Berry teaches or suggests first, second, and third loop containing band each “extending 360 degrees about the longitudinal axis.” Applicants respectfully assert that the first action final is improper because the claims as presented in the previously filed amendment are not anticipated by Berry for the reasons described below.

In light of the amendments made during prosecution of the present application Applicants assert that the instant claims dominate the claims presented in U.S. Patent Application Serial No. 10/236,144 to Pinchasik et al., published April 3, 2003 under U.S. Patent Application Publication No. 2003/0065383. The present Application has a priority date earlier than that of the Pinchasik reference, and as such Pinchasik is not prior art to the present application.

The following comments are presented in the same order and with headings corresponding to those set forth in the Office Action.

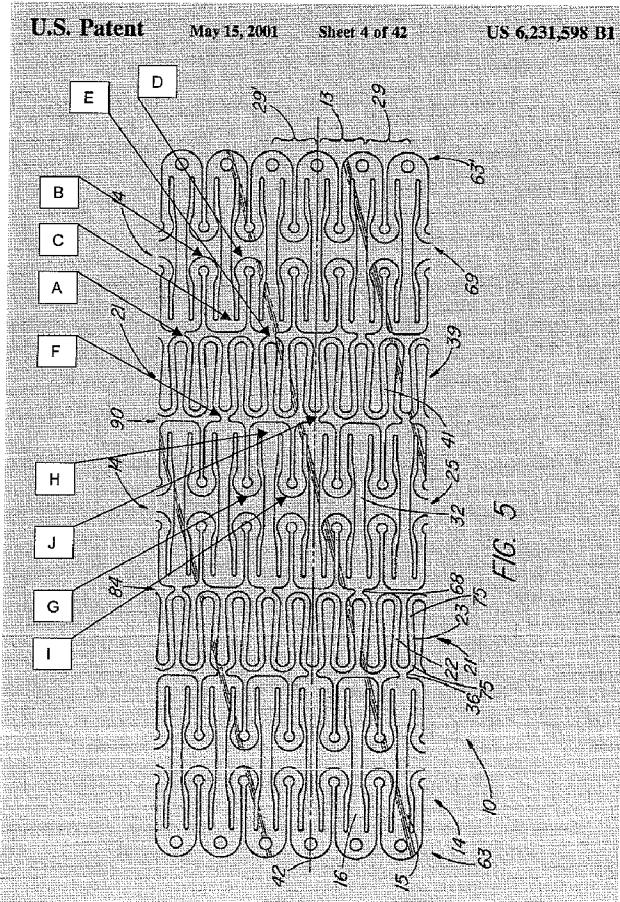
Claim Rejections—35 U.S.C. § 102

The Office rejected claims 38, 41, and 44 under 35 U.S.C. § 102(e), alleging the same to be anticipated by U.S. Patent No. 6,231,598 to Berry et al. (hereafter “Berry”). Applicants respectfully disagree.

Regarding Claim 38

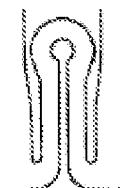
Berry, as shown below in the *annotated* version of FIG. 5 presented by the Office

in the Office Action mailed July 8, 2008, does not depict bands extending 360 degrees about a longitudinal axis:



Referring to the *annotated* version of FIG. 5 described in the Office Action, ABC is considered to be a first loop containing band, CDE is considered to be a second loop containing band, and EFA is considered to be a third loop containing band by the Office. However, none of these structures extend 360 degrees about the longitudinal axis, as in claim 38.

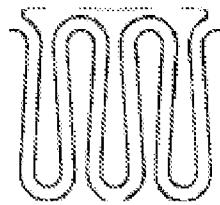
Based on the definitions provided by the Office, shown above, the first loop containing band ABC is the following structure:



Based on the definitions provided by the Office, shown above, the second loop containing band CDE is the following structure:



Based on the definitions provided by the Office, shown above, the third loop containing band EFA is the following structure:



It is clear that neither ABC, CDE, nor EFA “extend[] 360 degrees about the longitudinal axis,” as in claim 38. In fact, ABC and CDE, as described by the Office, *share* the same circumferential band, as seen above, and as such, *cannot* be considered to be a “first loop containing band extending 360 degrees about a longitudinal axis” and a “second loop containing band extending 360 degrees about a longitudinal axis,” as in claim 38.

Furthermore, claim 38 recites, “said third loop containing band disposed in the generally circumferential space between said first and second loop containing bands.” As seen above in the annotated version of FIG. 5 presented by the Office, the portion labeled EFA by the Office is located in a circumferential band that is adjacent to a circumferential band that includes the portions ABD and CDE as label by the Office. EFA *is not* “disposed in the generally circumferential space between said first and second loop containing bands,” as in claim 38.

To that end, Berry does not anticipate claim 38. Applicants respectfully request withdrawal of the rejection.

Regarding Claim 41

For at least the reasons presented above with respect to claim 38, Applicants assert that Berry fails to teach or suggest all the elements of claim 41, namely “the first circumferential

bands extending 360 degrees about a longitudinal axis,” and “the second circumferential bands extending 360 degrees about a longitudinal axis.”

To that end, Berry does not anticipate claim 41. Applicants respectfully request withdrawal of the rejection.

Regarding Claim 44

For at least the reasons presented above with respect to claim 38, Applicants assert that Berry fails to teach or suggest all the elements of claim 44. In particular, Berry does not teach or suggest “the first loop containing band extending 360 degrees about a longitudinal axis,” “the first loop containing band extending 360 degrees about a longitudinal axis,” and “the third loop containing band extending 360 degrees about a longitudinal axis.”

Furthermore, claim 44 recites, “the third loop containing band arranged between the first loop containing band and the second loop containing band.” As seen above in the annotated version of FIG. 5 presented by the Office, the portion labeled EFA by the Office is located in a circumferential band that is adjacent to a circumferential band that includes the portions ABD and CDE as label by the Office. EFA *is not* a “third loop containing band arranged between the first loop containing band and the second loop containing band,” as in claim 44.

Finally, claim 44 is directed to “a stent for holding open a blood vessel formed of a plurality of triangular cells.” In the past two office actions, the Office has put forth nothing more than conclusory statements that Berry has triangular cells. Applicants respectfully submit that Berry does not teach or suggest a stent “formed of a plurality of triangular cells,” as in claim 44.

For at least the above reasons, Berry does not anticipate claim 44. Applicants respectfully request withdrawal of the rejection.

Conclusion

In light of the above arguments, Applicants assert that the present application is in condition for allowance. Favorable consideration and early action to that effect is solicited earnestly.

Should the Examiner have any questions regarding the above amendment, the Examiner is invited to contact the Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: October 30, 2008

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